LEGAL ETHICS
FINAL EXAM
SPRING, 2004
PROFESSOR RUDNICK

This is a 3 hour exam. The exam is divided into three (3) questions. Each question is worth a different amount of points. The value of the question is set forth at the beginning of the question. You might want to allocate your time in accordance with the weight of the question. Assume that you are in a jurisdiction in which the Model Rules apply; however, if the Massachusetts Rules differ from the Model Rules, you must discuss how the issue would be handled/resolved differently in Massachusetts. When you discuss issues, discuss both sides.

YOU MAY CONSULT THE COPY OF THE MODEL RULES PROVIDED TO YOU. Please note that we are providing many rules, not all of which will be relevant. Do not start until told to do so. You may have nothing with you in this exam except writing implements. Please place all books, coats, jackets, pocketbooks, knapsacks, etc. at the front of the room. You may have access to them during the exam only with the proctor's permission. (You may keep valuables atop the desk in front of you if you choose)

YOU HAVE THREE HOURS FOR THIS EXAM.

IF YOU USE MORE THAN ONE BLUE BOOK, NUMBER THEM IN THE FOLLOWING MANNER: 1 of 2; 2 of 2. Use Social Security Number ONLY!!

There is a page limit of two bluebooks total, single spaced for the entire exam. Because of this restriction, we advise you to outline your answers before you begin writing so that you do not needlessly waste space. Please write on only one side of the page and leave some margin on at least the left hand side. No credit will be given for illegible writing or for answers which violate these instructions, and/or exceed the page restrictions. Keep in mind the relative value of the questions when apportioning your time.

GOOD LUCK!!!
1. (50 points) Tommy Top, Barry Bottom and Mary Middling, along with several other attorneys leased office space together. The lawyers subdivided the space and each has an individual office, although all the lawyers share one large reception area as well as a library/conference room and other common areas for storage and copying. Each maintains his or her files in locked cabinets in his or her office, although the office manager, who is jointly paid by all lawyers, has keys to all the cabinets. Additionally, the lawyers jointly share costs for rent, utilities and other expenses such as library books, copier use and supplies. Each has his or her own phone number. Although they share two secretaries, each lawyer pays each secretary based upon the total time that secretary works on that lawyer’s business. The letterhead says Top, Middling and Bottom, Attorneys At Law, but each attorney’s name is the only name to appear on the left side of the stationery. Each lawyer maintains his or her own malpractice insurance and each maintains his or her own bank accounts, including IOLTA accounts. They all paid for an ad in the Yellow Pages, advertising under the name of “Top, Middling and Bottom, Attorneys at Law.” It was a nice ad. Very tasteful. Among other things the ad stated:

“Over thirty years’ experience handling tort cases”
“We have recovered millions of dollars for our clients”
“You won’t find more reasonable rates anywhere”
“Certified by the American Association of Litigation Attorneys”

Verna Virtue retained Tommy Top to bring a tort action against Ralph Restauranteur. Although the two agreed on a contingent fee of 33 1/3 % plus costs, Tommy just hasn’t gotten around to getting Verna to sign the agreement. Seems Verna slipped and fell on a step leading to the Ladies’ Room in Ralph’s restaurant and seriously injured her back. Verna knew Tommy because he had represented her now-deceased mother, Mater (and subsequently Mater’s estate) when he was doing estate work at a previous firm. In fact, Tommy, who also had a real estate broker’s license, helped Verna sell her mother’s summer home on Nantucket. It was quite a good deal for Verna and the estate because Tommy charged the estate a smaller percentage commission than a Nantucket realtor would have charged.

Shortly after Verna hired Tommy, while Tommy was passing through the reception area of his office, Mary introduced him to one of her favorite clients—-you guessed it—-Ralph Restauranteur. Seems Ralph had retained Mary Middling to represent him when he purchased the restaurant one year ago. Mary hasn’t represented the business since the sale was completed, but she has continued to do some work for Ralph individually.

When Verna first came to see Tommy, she informed him that she had been at the restaurant with two friends, Connie and Diane. Although they were not with her at the time she fell, they rushed to her side almost immediately thereafter as she was still lying on the ground. Wanda Waitress, an employee of Ralph’s restaurant, witnessed the fall. She told Verna that she had mentioned the dangerous step to Ralph many times, told him some day someone would get hurt, and offered to help Verna in any way she could. Tommy immediately made an appointment to talk to Wanda, although he was smart enough to conduct the interview away from the restaurant.
2. (35 points) Andy Attorney represented Dave Druggie, who was charged with trafficking in cocaine. The evidence is that Dave was living in a house leased to Tony Trafficker. The cops had had the premises under surveillance for several days, during which they observed the usual heavy short term traffic coming in and out of the residence, consistent with drug dealing on the premises. One day, after seeing the usual foot traffic, several officers entered Tony’s house without a warrant and found Tony sitting in the living room. Upon questioning, Tony denied that drug trafficking was going on, and, believing that he had just sold the last bit of coke, consented to a search of his residence. Unfortunately, the police found drug paraphernalia under the bed in the room occupied by Dave, which Tony forgot about.

Attorney represented Dave at his bail hearing. Although the probation report reflected that Dave had no prior record, Attorney knew that Dave had a conviction for driving under the influence of a controlled substance, to wit: cocaine, which occurred in Maine. Dave had told Attorney about the conviction during their initial conference while Dave was still in the lock up. The judge refused to impose the exorbitant bail requested by the District Attorney on the grounds that the defendant had no prior record. Neither Dave nor Attorney was asked about his prior record.

Trafficker pleaded guilty to possession with intent to distribute to avoid a mandatory sentence. Druggie refused to plead guilty and insisted on going to trial. At Druggie’s trial, the jury was not told about Trafficker’s plea. The prosecutor called the officers who searched the house and arrested the two, to testify about Druggie’s and Trafficker’s conduct during the search and how he found the paraphernalia. During closing argument, the prosecutor made the following statement: “Now, why would Trafficker have consented to search his residence? Maybe the paraphernalia was placed under the bed by someone else and Trafficker didn’t know it was there.” Attorney objected, but the trial judge overruled the objection, stating the remark was “fair comment on the evidence.” Druggie was convicted and he fired Attorney following the sentencing.

Attorney sends you his file. Upon review, you discover the following:

1) Druggie’s fees were paid by a man named Ralph Ringleader on the condition that he remain anonymous and Druggie not know about the payment.

2) Attorney seemed concerned about Druggie’s mental state (too much dope affected his brain cells). In fact, Attorney wrote a note in the file stating that he was so concerned that he wanted Druggie examined for competence and a possible insanity plea. The note reflects that Druggie flatly refused, insisting there was nothing wrong with him and he’d never go to a shrink.

3) Attorney failed to file a motion to suppress the drugs. Seems that he believed that because Dave was not on the lease he had no right to claim an interest in the premises, which is required to bring a motion to suppress. Although that is the general
rule, Dave was not aware that the State Supreme Court had just held that if the individual is charged with a crime involving possession, no proof of an interest in the premises searched is necessary to bring the motion.

Discuss the ethical issues raised by the fact pattern.

3. (15 points) Mike and Peter were associates in a large law firm that does primarily insurance defense work. Among the firm’s major clients was Infinite, a division of Japan Motors, one of the largest car manufacturers in the world. After three years with the firm, Mike and Peter decided to go out on their own. They formed a firm and, within the first year, had been retained to represent a class action against a number of SUV manufacturers, including Infinite. The plaintiff/car owners claim the vehicles are unsafe because they are prone to tipping over at certain speeds. Mike and Peter felt quite capable of representing the class, even though they had only worked on a few automobile cases at their previous firm, and while they were products cases, none of them related to SUVs. Because of their inexperience, they knew they would have to do more work than a more experienced lawyer would, so they negotiated a 45% contingent fee agreement with the class members. They figured that should fairly compensate them for their time. The members agreed to the fee and signed the agreements.

Counsel for Infinite, Joe Devillen, has filed a motion to disqualify Mike and Peter in the SUV case.

Peter and Mike’s secretary checked the fax machine one night before he left, and discovered that Devillen’s office had sent them a copy of a letter Devillen had written to the client. Their secretary left the copy on Peter’s desk. He started to read it before he realized that this letter was not intended for them. In the part he read, Devillen made reference to a memo sent to an in-house Infinite lawyer in which an Infinite engineer acknowledged that the SUV’s design led to instability and rollovers.

Discuss the ethical issues raised by the fact pattern.
Tommy filed suit in the state Superior Court. During a settlement conference before discovery was complete, Tommy asked Ralph’s attorney, Ira Insurancedefense, about Ralph’s insurance coverage. Ira told Tommy that Ralph had a $250,000/$500,000 policy ($250,000 per claim, a total of $500,000 per incident) with a $10,000 deductible. Ira did not disclose that there was an umbrella policy for up to $1,000,000 in coverage, because she didn’t believe that Verna’s damages would exceed the $250,000. Ira offered $15,000. Tommy rejected it out of hand, because Verna had more than $15,000 in medicals alone.

The day following the conference, Tommy called Verna to report what went on. He had to call several times, because Verna was not at home. Turns out she was visiting Connie in the hospital. Too bad. Connie is in a coma after being shot by a fellow law professor who had cracked under the stress. The doctors do not believe Connie will ever come out of the coma.

Tommy believed the damages might exceed $250,000, and he told that to Verna when he reported the results of the settlement conference. Verna asked Tommy what would happen if they recovered more than $250,000. Tommy replied unless Ralph was found personally liable, or they could in some way impose liability on Ralph, who personally held assets, she would collect the policy amount and that would be it. Verna went ballistic. She insisted that Tommy sue Ralph personally and get an attachment on his Macmansion in North Andover. Tommy did not believe that there were legal grounds for such a strategy so he refused. Verna fired Tommy on the spot, and, several days later, retained Sandy Successor. Sandy wrote to Tommy, requesting the file. Tommy wrote back, refusing to send anything but the pleadings, claiming Verna still owed $1250 in costs for a variety of medical reports.

Discuss the ethical issues raised by the fact pattern.